UNITED STATES PATENT AND TRADEMARK OFFICE

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ART UNIT	PAPER NUMBER
3629	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/661,756	LAVU ET AL.
	Examiner	Art Unit	
	Michael M. Thompson	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 March 2009*.
2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14,19-24 and 29-44* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-14,19-24, 29-4* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Claim Objections

1.   Claim 29 is objected to because of the following informalities: plan is misspelled

as plane. Appropriate correction is required.

Response to Arguments

2.   Applicant's arguments filed 03-27-2009 have been fully considered but they are

not persuasive. Applicant's arguments with respect to claims 1-14, 19-24, 29-36 and

37-44 have been considered but are moot in view of the new interpretation of the prior

art rejection necessitated by Applicant's amendments.

3.   In addressing Applicant's arguments with respect to 35 U.S.C. 101, Applicant

asserts the amendments satisfy the transformation test and then recites the new

limitations and support. It appears Applicant has not overcome the rejection of record

for several reasons. On the outset, a substantive discussion of how the new limitations

overcome the transformation test has not been outlined. In particular, of the two "paths"

it appears that Applicant is asserting that information has been transformed. In

particular, the Bilski decision regarding transformation held that the process did not

"transform any *article* to a different state or thing." In addressing transformation the

court further stated, "[p]urported transformation or manipulation simply of public or

private legal obligations or relationships, business *risks*, or other such abstractions

cannot meet the test because **they are not physical objects or substances, and they**

are not representative of physical objects or substances. Applicants' process at

most incorporates only such ineligible transformations." *In re Bilski, 545 F.3d 943, at*

963-964 (Fed. Cir. 2008). It appears that, for at least these reasons, Applicant's

invention would fail the transformation test. In fact, no real transformation of physical

objects or substances occurs. It is believed that the Examiner has already outlined the

machine test as it relates to extra-solution activity previously and continued in the

current rejection under 35 U.S.C. 101. Furthermore, as stated previously, claims 29-32

and 34-44, it is asserted that the inherent teachings of Abrahams itself render the

limitations of these claims unpatentable. For example, as explained in the 101 rejection

of record, Applicant's disclosure recites that the risk mitigation is a product of a risk

review board that looks to past risks and suggests new mitigation plans based on the

old plans including preventative and corrective controls. In this respect, Abrahams in

Figure 1B shows a system by which existing risk records are used in profiles and new

risk records are stored in a knowledge database for use by others. Abrahams states

unequivocally in paragraph [0053] that the knowledge base learns over time thereby

implying that his system is capable of being used to modify the overall process. Other

similar recitations occur in paragraphs [0019], [0058], [0064], and [0070].

4.   In addressing Applicant's primary argument with respect to the independent

claims, Applicant asserts:

> By comparison, Abrahams Table 1 does not have multiple risk categories and
> does not provide "category specific" definitions. Table 1 is generic and is applied
> to all specified risks and risk categories in the same manner. Even assuming
> (albeit incorrectly) that Abrahams did teach risk categories as that term is used
> by Applicant, Abrahams still teaches using the same generic Table 1 to assign Pf
> values. If the Abrahams user encounters a hardware risk than the user must
> decide based on his or her own subjective assessment whether the risk is "rare",
> "unlikely", "possible", "likely" or "almost certain". If the user encounters a

technology risk, he or she repeats the same assessment. These "levels" are certainly not category-specific; Table I does not provide a different definition of "rare" for a hardware risk, a software risk, a technology risk and so forth. Furthermore, the terms "rare", "unlikely" etc. are not 'standardized qualitative probability definitions', they are undefined. Table 1 itself includes the parenthetical "subjective value" under the heading Level. Applicant invites the Examiner to simply compare Applicant's Figure 9 as a representative example of a Pf table with Abrahams Table 1, the differences we are claiming are clear. The Examiner is correct that Applicant's claimed invention does not eliminate all user subjectivity. The user must still decide which entry to select. However, the user is provided with a qualitative description tailored to the particular risk

Applicant's primary argument appears to rely on the categories of subjective assessment. The Examiner has provided what, may be broadly interpreted as, risk categories with "category specific definitions" as described in the previous rejection. The selection of the risk assessment is subjective while the actual risk categories are "category specific" having "standardized" terms that are qualitative with an objective/qualitative definition. In fact, after subjective selection of the risk, terms like "rare", "unlikely", "possible", etc., the terms themselves include a standard/objective definition, when taken individually or together are qualitative. They are qualitative since they provide a range of risk and provide a method of qualitating the level or risk in objective terms having standard definitions to be considered by the user. As stated previously, Applicant's own specification appears to recite circumstances where individual users are able to provide the "standardized qualitative definitions" when accessing the system. Without exhaustive study, some examples might include, pg. 5 lines 26-31 to pg. 6, lines 1-4, for the proposition that new risks allow for the user to "augment their own knowledge and experience" to create an initial set of risks wherein the user "must assess each risk and assign a risk factor (Rf)." On pg 12, lines 25-31 to

pg. 13, lines 1-2, which teaches that new risks will allow "the engineer" to "select the

qualitative probability definitions 82 that most closely characterizes the risk thereby

specifying the value 80 of Pf." Further, the engineer may select from the Severity of

Consequence tables to create a severity value for each risk as on pg 19. These

statements suggests some level of subjectivity in Applicant's invention. In fact, the

"standardized definitions" have inherently been derived at some point in time and where

likely subjective or derived from some history of information. However, in addressing

Applicant's amendments, and in light of the newly amended rejection, it is the

Examiner's position that the qualitative probability definitions are the "levels" in Table 1,

and they have an associated qualitative definition as indicated below in the prior art

rejection as paragraphs [0033-0034] describe.

Claim Rejections - 35 USC § 101

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

6.   Claims 1-14, 29-33 and 37-40 are rejected under 35 U.S.C. 101 because the

claimed invention is directed to non-statutory subject matter.

The first step in determining whether a claim recites patent eligible subject matter

is to determine whether the claim falls within one of the four statutory categories of

invention recited in 35 USC 101: process, machine, manufacture and composition of

matter. The latter three categories define "things" or "products", while a "process"

consists of a series of steps or acts to be performed. For purposes of 101, the analysis

of a process is guided by the machine-or-transformation test. *In re Bilski, 545 F.3d 94,*

(Fed. Cir. 2008) (en banc).

Based on Supreme Court precedent (*Diamond v Diehr*, 450 U.S. 175,184 (1981);

Parker v. Flook, 437 US 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70

(1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent precedent from

the Federal Circuit from *In re Bilski*, the machine-or-transformation test is a two-

branched inquiry; an applicant may show that a process claim satisfies § 101 either by

showing that his claim is tied to a particular machine, or by showing that his claim

transforms an article. See Benson, 409 U.S. at 70. *Certain considerations are*

applicable to analysis under either branch. First, as illustrated by Benson, the use of a

specific machine or transformation of an article must impose meaningful limits on the

claim's scope to impart patent-eligibility. See Benson, 409 U.S. at 71-72. Second, the

involvement of the machine or transformation in the claimed process must not merely

be insignificant extra-solution activity. See Flook, 437 U.S. at 590. If neither of these

requirements is met by the claim, the method is not a patent eligible process under 35

U.S.C. 101.

7.   **Claims 1-14, 29-33 and 37-40** are drawn to **a method for managing risk.** All of

the recited method steps can be performed by the user themselves, in the mind of the

user or between different users through writing by a user, and therefor these method

steps are not tied to a particular machine nor do they transform an article. To qualify as

a statutory process, the claim should positively recite in the body of the claim, the

machine to which it is tied. For example, by identifying the particular machine that

accomplishes the method steps, or positively reciting the article that is being

transformed. Furthermore, even if Applicant amends to identify a particular machine, in

the least, it appears that any claim recitation to a particular machine would only

constitute "involvement" that is insignificant extra-solution activity. Evidence to support

this assertion is found in the limitations themselves when Applicant recites the storing,

data gathering/searching and viewing/displaying of information from the database.

Additional evidence is found in Applicant's Specification when discussion claims 29-33,

indicating that limitations including formulating and storing a new risk mitigation plan is

done by a Risk Review Board (pgs. 13 and 14). This evidence indicates that the steps

of formulating, and likely implementing are done by the users, administrative or

otherwise. In short, the method steps of storing, formulating enterprise searches,

viewing, formulating mitigation searches, formulating new mitigation plans, storing and

implementing are all accomplished by the users or people and *not a particular machine*

and are thus insignificant extra solution activity.

Please note that ***nominal recitations of a machine in an otherwise ineligible***

method fail to make the method a statutory process. See Benson, 409 U.S. at 70 -

72. As Comiskey recognized, "the mere use of the machine to collect data necessary

for application of the mental process may not make the claim patentable subject

matter." Comiskey, 499 F.3d at 1380 (citing *In re* Grams, 888 F.2d 835, 839-40 (Fed.

Cir. 1989)). Incidental physical limitations, such as data gathering, field of use

limitations, storing, collecting, sending, receiving, and other forms of insignificant extra

solution activity are not enough to convert an abstract idea into a statutory process. In

other words, nominal or token recitations of involvement of a machine or transformation

in a method claim do not convert an otherwise ineligible claim into an eligible one. Ex

parte Langemyr (2008) and In re Bilski, (Fed. Cir. 2008).

Therefore, the applicable test to determine whether a claim is drawn to a patent-

eligible process under § 101 is the machine-or-transformation test set forth by the

Supreme Court and clarified herein, and Applicants' claim here appears to fail this test.

No new matter should be added.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 1-2, 7-11, 13-14, 29-33 and 42-44 are rejected under 35 U.S.C. 103(a)

as being unpatentable over Abrahams (2005/0086090) in view of Beverina

(2001/0027389).

10.   **As per claim 1 and 41**, Abrahams teaches a method of managing risk related to

a successful completion of a development project, comprising:

storing a probability of occurrence (Pf) table having a plurality of risk categories

(i.e. via Category 2 in Fig. 1B, that shows an example of different Categories that

contain sub-indented risk tables such as show in Table 1, p. 4),each said category

having a plurality of table entries (i.e. sub-indented risk tables), each entry including a

category-specific standardized qualitative probability definition associated with a Pf

rating (i.e. via the risk tables described in Fig. 1C, para [0033-0034] the risk tables are

described as actually being qualitative wherein the definition of each level in the table

has a qualitative definition or value associated with it, while alternatively the qualitative

values may be used directly by an experienced user,) and a severity of consequence

(Cf) table (via Table 2, that shows an example of different risk consequences, Table 2,

p. 4), identified risks and existing risk mitigation plans in a shared risk database (Fig. 1C

shows a template for an identified risk, and control [mitigation] plans, said information

must inherently be stored within a database); and viewing the Pf table to select the one

or more risk categories for said at least one risk (i.e. inherently accomplished and

outlined above associating risks) and for each said category selects the qualitative

probability definition that characterizes the risk (i.e. as describe above, the risk tables in

Fig. 1C, para [0033-0034] are described as qualitative, wherein the definition of each

level in the table has a qualitative definition or value associated with it, while

alternatively the qualitative values may be used directly by an experienced user)

thereby specifying a probability of occurrence Pf for said at least one risk; (via Table 1,

that shows an example of different risk probabilities, Table 1, p. 4, including the

disclosure and use of the risk tables inherently allows for "specifying a probability of

occurrence Pf for the risk, as recited in the "thereby" statement),

viewing the Cf table to select a severity of consequence Cf for said at least one

risk, (via Table 2, that shows an example of different risk consequences, Table 2, p. 4)

said Pf and Cf being combined and ranked to define prioritized risk factor Rf (a user

selects inherent values of likelihood [Pf] and consequence for a risk [Cf], and … the

system then calculations residual levels of likelihood, consequence and risk rating for

the risk [Pf], ¶ 6, lines 6-11. Further, applicant should note that a similar argument

could be made from the Context Profile data store wherein the hierarchy could allow for

different risks to fall under different "profiles" (i.e. categories) in particular contexts. This

is at least one other interpretation when the reference is given a full reading);

formulating a risk mitigation plan including at least one mitigation activity for said

at least one risk (i.e. the primary purpose of the invention was to derive plans to mitigate

and manage risk as shown in paragraph [0001], and via examples such as the "action

plan" as recited in paragraphs [0061], [0065-0066], [0077] and/or Table 3) , said risk

mitigation plan having an associated risk exposure (i.e. para [0041]) based on the risk

factors Rf for said at least one risk; performing the at least one mitigation activity for

said at least one risk to implement the risk mitigation plan (i.e. inherent through the user

implementing the plan); as the risk mitigation plan is implemented over time, at least

one said user viewing the Pf and Cf tables to reassess the at least one risk, select Pf

and Cf and update the prioritized risk factor Rf (i.e. via para [0066-0068], [0070] and/or

Figures 5, 7; the risk factors being prioritized as described earlier at para [0041]);

displaying a chart of risk exposure over time; and adjusting the mitigation plan based on

the risk exposure. (i.e. via at least para [0071] for the proposition of displaying charted

information; The residual or inherent risk rating (having a quantitative equivalent called

here exposure, measured for example in dollars) thus provides a measure of the risk

exposure for the particular risk; and adjusting the mitigation plan based on the risk

exposure [0041] wherein the averages of the values used in each profile of various

users is overtime [0058]. In short, the data that may be provided by "chart" such as

spreadsheet or otherwise in the Abrahams et al. invention is analyzed, collected and

displayed over "time.")

However, Abrahams fails to explicitly disclose

via a web browser, a plurality of users, formulating an enterprise search of the

risk database to identify at least one risk.

Beverina in the same field of endeavor [risk management systems] teaches a

web browser (Fig. 3), a plurality of users (Fig. 1), formulating an enterprise search of the

risk database to identify at least one risk (via ¶ 361, "the user can also search the sites

for particular information" where the particular information is a risk, and formulating a

mitigation search of the risk database to identify existing risk mitigation plans for the

identified risk to enhance the development of new mitigation plans or share with other

programs the resources to implement the mitigation plan. (via "risk mitigation [that] also

uses threat and countermeasure characteristics in making decisions. Various

countermeasures are compared to the specific threat to determine which ones are most

effective at mitigating the risk of the threat against the target", Examiner construes this

to be the equivalent of a mitigation plan search as it evaluates existing plans to provide

the user with the best alternatives. ¶ 307, lines 9-13)

It would have been obvious to one skilled in the art at the time of invention to

combine the risk management system taught by Abrahams with the risk management

system features of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques.

11.   **As per claim 2**, Abrahams teaches the method wherein the probability of occurrence table has a plurality of risk categories, each said category having table entries that include standardized qualitative probability definitions. (via Table 1, p. 4, that shows the plurality of categories ranging from rare to almost certain, and the standardized qualitative probability definitions for each category of risk). Statements reciting "wherein the users view the cost and schedule impact categories and the standardized qualitative impact definitions for each said at least one risk to select the Cf rating, said displayed risk exposure including a cost exposure and a schedule exposure that are based on the project-specific amounts associated with the selected Cf rating" only point to viewing displayed information. Steps regarding the subjectivity of selecting Cf ratings have previously been addressed. Regardless, even though the combination fails to disclose the use of cost and schedule impact categories, the specific type of categories are deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The storing, formulating and viewing steps would be performed the same regardless of what type of categories are used. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01. **As is described throughout the remaining claim rejections, cost impact is described throughout Abrahams et al.**

12.   **As per claim 7**, Abrahams fails to explicitly disclose the method wherein the

enterprise search includes a combination of at least two parameters including current or

historic, risk factor, vendor, component, functional area, category, key work in risk title,

key work in risk description, IPT, actionee, actionee/team, lead/submitter, or risk

number. However, Beverina, in the same field of endeavor [risk management systems],

teaches searches "by categories such as threat type, risk, score and others" (¶ 363,

lines 3-5). Examiner construes risk to be the current risk factor, and threat type to be

the category. It would have been obvious to one skilled in the art at the time of

invention to combine the risk management system taught by Abrahams with the risk

management system search features of Beverina. Motivation for the combination is a

system where users have easier access to past records, and therefore can use past

results easier.

13.   **As per claim 8**, Abrahams teaches at least one risk including a combination of

risk number, program, risk title and a current risk factor (Fig. 1B displays the risk

number next to the risk, and a program is detailed under each consequence [Examiner

construes a program to be a series of steps, in this case the program is the corrective

controls], Fig. 1C displays the title, as well as the risk rating). However, Abrahams fails

to explicitly disclose that this information is retrieved via a search. Beverina, in the

same field of endeavor [risk management systems], teaches searches "by categories

such as threat type, risk, score and others" (¶ 363, lines 3-5). It would have been

obvious to one skilled in the art at the time of invention to combine the risk management

system taught by Abrahams with the risk management system search features of

Beverina. Motivation for the combination is a system where users have easier access

to past records, and therefore can use past results easier.

14.   **As per claim 9**, Abrahams fails to explicitly disclose the method wherein the web

browser provides a transfer link from said at least one risk with its risk mitigation plan to

import the selected risk and mitigation plan into another program. However, Beverina,

in the same field of endeavor [risk management systems], teaches that "Results from

local VAT 200 sessions are transferred to the TIMS 130, in the form of the VAT

Database 220, and stored in a database along with sessions from other sites." (¶ 364)

Fig. 1 further illustrates this detail as risk mitigation plans are created and stored, until

they are imported into the TIMS program. It would have been obvious to one skilled in

the art at the time of invention to combine the risk management system taught by

Abrahams with the risk management system features of Beverina. Motivation for the

combination is a system with more features that should produce better risk

management analysis and techniques.

15.   **As per claim 10**, Abrahams fails to explicitly disclose the method wherein the

mitigation search includes a combination of at least two parameters including a risk

description, risk status, start date, original planned complete date, planned complete

date, and complete date. However, Beverina, in the same field of endeavor [risk

management systems], teaches that users can "search and browse the data from the

individual VAT 200 sessions by categories such as threat type, risk, score and others."

(¶ 363) Figure 50 shows a calendar within that VAT 200 for entry of start and

completion dates. A user therefore, would be able to do a mitigation search including

the parameters of start date and complete date. It would have been obvious to one

skilled in the art at the time of invention to combine the risk management system taught

by Abrahams with the risk management system features of Beverina. Motivation for the

combination is a system with more features that should produce better risk

management analysis and techniques.

16.   **As per claim 11**, Abrahams fails to explicitly disclose the method further

including automatically generating risk reports including identified risks, prioritized risk

factors, and mitigation plans. However, Beverina, in the same field of endeavor [risk

management systems], teaches that users can "create, edit and delete report formats to

create new and customized reports to meet future needs" (¶ 374, lines 6-7). A user

would be enabled to create risk reports including the identified risk, prioritized risk

factors, and mitigation plans. It would have been obvious to one skilled in the art at the

time of invention to combine the risk management system taught by Abrahams with the

risk management reporting feature of Beverina. Motivation for the combination is a

system with more features that should produce better risk management analysis and

techniques as well as easier sharing of information.

17.   **As per claim 13**, Abrahams fails to explicitly disclose the method wherein the

web browser has an interface that includes a menu bar with pull-down menu items and

menu sub-items for viewing the current program, conducting the enterprise search and

conducting the mitigation search and hyperlinks to the Pf and Cf tables. However,

Beverina, in the same field of endeavor [risk management systems] teaches a web

browser (Fig. 3), with pull-down menu items [viewable in the drawing] and menu sub-

items for viewing the current program [viewable in the drawing], conducting the

enterprise search [via the search box] and conducting the mitigation search [via the

search box] and hyperlinks to the Pf and Cf tables [via the THREATS and

VULNERABILITY hyperlinks in the drawing]. It would have been obvious to one skilled

in the art at the time of invention to combine the risk management system taught by

Abrahams with the web based feature of Beverina. Motivation for the combination is a

system with more features that should produce better risk management analysis and

techniques as well as easier navigation of information.

18.   **As per claim 14**, Abrahams teaches the method wherein the identified risks, risk

factors, and mitigation plans for each user are stored in the shared risk database.

Figure 1B shows the "knowledge base" construed by Examiner to be a database,

containing identified risks, risk factors, and mitigation plans [Examiner construes the

corrective control and the preventative control to be a mitigation plan].

19.   **As per claim 29**, it is asserted that Abrahams teaches formulating a mitigation

search of the risk database to identify existing risk mitigation plans for the identified risk

to enhance the development of new mitigation plans or share with other programs the

resources to implement the mitigation plan.

In addressing new claims 29-32 and 34-36, it is asserted that the inherent

teachings of Abrahams itself render the limitations of these claims unpatentable. For

example, as explained in the 101 rejection of record, Applicant's disclosure recites that

the risk mitigation is a product of a risk review board that looks to past risks and

suggests new mitigation plans based on the old plans including preventative and

corrective controls. In this respect, Abrahams in Figure 1B shows a system by which

existing risk records are used in profiles and new risk records are stored in a knowledge

database for use by others. Abrahams states unequivocally in paragraph [0053] that

the knowledge base learns over time thereby implying that his system is capable of

being used to modify the overall process. Other similar recitations occur in paragraphs

[0019], [0058], [0064], and [0070].

If Applicant disagrees with the Examiner's interpretation of Abrahams, then

Beverina in the same field of endeavor [risk management systems] teaches a web

browser (Fig. 3), a plurality of users (Fig. 1), formulating an enterprise search of the risk

database to identify at least one risk (via ¶ 361, "the user can also search the sites for

particular information" where the particular information is a risk, and formulating a

mitigation search of the risk database to identify existing risk mitigation plans for the

identified risk to enhance the development of new mitigation plans or share with other

programs the resources to implement the mitigation plan. (via "risk mitigation [that] also

uses threat and countermeasure characteristics in making decisions. Various

countermeasures are compared to the specific threat to determine which ones are most

effective at mitigating the risk of the threat against the target", Examiner construes this

to be the equivalent of a mitigation plan search as it evaluates existing plans to provide

the user with the best alternatives. ¶ 307, lines 9-13)

It would have been obvious to one skilled in the art at the time of invention to

combine the risk management system taught by Abrahams with the risk management

system features of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques.

20.   **As per claim 30**, Abrahams and Beverina teach the method of claim 29, wherein the mitigation search identifies both successful and unsuccessful existing risk mitigation plans. (i.e. at least Abrahams and/or Beverina teach that the plans are stored, and therefore by that very nature both good and bad plans will be accessible wherein the knowledge base collects new risk records wherein the risk records include the mitigation or preventative and corrective controls.)

21.   **As per claim 31**, Abrahams and Beverina teach the method of claim 29, further comprising: aggregating the risk mitigation plans from a plurality of different users and different programs to update and store a risk mitigation plan on the shared database. (i.e. as taught by at least Abrahams wherein the knowledge base collects new risk records wherein the risk records include the mitigation or preventative and corrective controls.)

22.   **As per claim 32**, Abrahams and Beverina teach the method of claim 29, further comprising: sharing resources with other programs to implement the mitigation plan. (i.e. in the least via the use over the internet which inherently interacts with other programs, such as user interfaces.)

23.   **As per claim 33**, Abrahams and Beverina teach the method of claim 29, where the risk mitigation plan includes a number of activities, each activity including a description and an assigned Pf and Cf rating. (i.e. this assignment is inherent in the methods described in the prior art, since each project will include categories and risks

that will have associated Pf and Cf ratings when they have already been performed and placed in the knowledge database. Essentially, projects already completed will have been given ratings.)

24.   **As per claim 42**, the combination of Abrahams and Beverina teach the system of claim 41, wherein the cost impact category includes multiple sub-categories each having a project-specific amount, each said sub-category being assigned its own Cf ratings said respective Cf ratings used to determine the displayed cost exposure for the different sub-categories. This claim is rejected under a similar rationale as that of claim 21. It is inherent that the Cf ratings as described throughout the rejection are being used to determine exposure. Cost impact is described throughout at least the Abrahams et al. reference. Please note there appears to be no structural limitations in the system claim. It is believed that the prior art is capable of Applicant's intended use.

25.   **As per claim 43**, the combination of Abrahams and Beverina teach the system of claim 42, wherein the sub-categories include development cost (NKE), unit cost (DTC) and operations and support (OJS). Please note that the actual sub-categories are considered non-functional descriptive material and there appears to be no structural limitations in the system claim. It is believed that the prior art is capable of Applicant's intended use.

26.   **As per claim 44**, Abrahams and Beverina teach the system of claim 41, wherein the maximum Cf rating for the multiple sub-categories is combined with the maximum Pf for the one or more risk categories to define the prioritized risk factor Rf. Please note

there appears to be no structural limitations in the system claim. It is believed that the

prior art is capable of Applicant's intended use.

27.   Claims 3-6 and 12 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Abrahams (2005/0086090) and Beverina (2001/0027389) in view

of Examiner's Official Notice.

28.   **As per claim 3**, Abrahams discloses the method further comprising tailoring the

probability of occurrence table to the select few categories that are relevant to the

development project. (i.e. it is inherent in the teaching of Abrahams that a user may

reduce or add more categories depending on the project or the number of categories

one wishes to consider. Subsequently, any associated Pf tables as described in claim 1

would be on the shared risk database in Fig. 1B.)   However, Abrahams fails to

explicitly disclose that this is done via a web browser. Beverina, in the same field of

endeavor [risk management systems], teaches a browser based risk management

system. It would have been obvious to one skilled in the art at the time of the invention

to use the system taught by Abrahams in a web based environment as taught by

Beverina. Motivation to combine the two is present as a web based risk management

system allows users in remote locations to easily modify and update risk profiles.

Furthermore, the use or restriction of user access, or limiting access to an administrator

is well known in the art of computer programming. Several systems such as Microsoft

operating systems use such features to limit access for users. Similarly there are

security programs that operate in similar fashion for the proposition of preventing

access to certain features of an operating system. Examiner takes Official Notice with respect to administrative access to a system.

29.   **As per claim 4**, the combination of Abrahams and Beverina teaches the claimed invention as mentioned in claim 1, above. Abrahams further teaches the method wherein the severity of consequence table has a schedule impact category with the table entries having a cost impact category with the table entries specifying multiple sub-categories of cost impacts in actual dollars for the development project. (Table 2, p. 4) However, the Abrahams and Beverina combination fails to explicitly disclose table entries specifying an amount in days, weeks or months. Examiner takes Official Notice that it is old and well known in the art of project management to measure negative impacts upon projects like delays in units of time such as days, weeks, or months. It would have been obvious to one skilled in the art at the time of invention to combine the table taught by Abrahams and Beverina with Examiner's Official Notice. Motivation to combine is to have an additional quantifiable way to measure consequences of a particular outcome. The user selecting Cf values has been addressed previously in claim 1. Regardless, even though the combination fails to disclose the use of cost and schedule impact categories, the specific type of categories are deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The storing, formulating and viewing steps would be performed the same regardless of what type of categories are used. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F .2d

1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); In re Lowry, 32 F .3d 1579, 32

USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

30.   **As per claim 5**, Abrahams teaches the method wherein said multiple sub-

categories include development cost (NRE), unit cost (DTC) and operations and support

(O/S) categories. (via "in one mode of use, the inherent risk impact cost is aggregated

over the inherent cost of each consequence of the risk" where consequences of each

risk would inherently include development cost, unit cost, and operations and support

costs, ¶ 7, lines 15-17). Sub-categories are also taught in Abrahams et al., and the risk

exposure is displayed as taught previously in claim 1 and 2. Regardless, even though

the combination fails to disclose the use of multiple sub-impact categories, the specific

type of categories are deemed to be nonfunctional descriptive material and is not

functionally involved in the steps recited. The storing, formulating, viewing and

displaying steps would be performed the same regardless of what type of categories are

used. Thus this descriptive material will not distinguish the claimed invention from the

prior art in terms of patentability, see In re Gulack, 703 F .2d 1381, 1385, 217 USPQ

401, 404 (Fed.Cir.1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)

and MPEP 2106.01.

31.   **As per claim 6**, the combination of Abrahams and Beverina and Examiner's

Official Notice teaches the claimed invention as mentioned in claim 4, above.

Abrahams further teaches the method further comprising the severity of consequence

table to select the cost impact sub-categories and specify their dollar amounts (Table 2,

p. 4 shows the severity of consequence table which includes cost impact sub-categories

and dollar ranges.) Abrahams further teaches a shared risk database for storage as

shown in Fig. 1B, element 11. Furthermore, the use or restriction of user access, or

limiting access to an administrator is well known in the art of computer programming.

Several systems such as Microsoft operating systems use such features to limit access

for users. Similarly there are security programs that operate in similar fashion for the

proposition of preventing access to certain features of an operating system. Examiner

takes Official Notice with respect to administrative access to a system. With respect to

the specifics of the sub-categories, the specific type of categories are deemed to be

nonfunctional descriptive material and is not functionally involved in the steps recited.

The storing, formulating and viewing steps would be performed the same regardless of

what type of categories are used. Thus this descriptive material will not distinguish the

claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F .2d

1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); In re Lowry, 32 F .3d 1579, 32

USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

32.   **As per claim 12**, the combination of Abrahams and Beverina teaches the

claimed invention as mentioned in claim 11, above. However, the Abrahams and

Beverina combination fails to explicitly teach the method wherein a risk review board

(RRB) report is generated by submitting minutes for a RRB meeting by entering

information for each risk covered during a RRB meeting and entering the date of the

RRB meeting; and submitting the minutes to generate the RRB report including

Number, Title, Actionee, Rf, Risk Level and Comments for each risk. Examiner takes

Official Notice that it is old and well known in the art of meetings to generate and submit

minutes. Examiner further takes Official Notice that it is old and well known in the art of

recording minutes to record topics discussed as well as the date of the meeting.

Beverina, teaches that clauses of a report can include "Data values in the database and

results from simple queries of the database that return text or simple data values" (¶

429-432). These results would include information such as Risk Factors, Risk Level

and Comments. It would have been obvious to one skilled in the art at the time of

invention to combine the system of Abrahams with the reporting features of Beverina in

view of Examiner's Official Notice. Motivation to combine is increased communication

within a risk management setting.

33.   Claims 19-20, 22-24, 34-36 and 41 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Abrahams (2005/0086090) and Beverina (2001/0027389)

in view of Heinrich (6,895,383).

34.   **As per claim 19 and 41**, Abrahams teaches a web-based risk management

system for managing risk related to a successful completion of a development project,

comprising:

a server comprising a shared risk database that stores a probability of

occurrence (Pf) table (via Table 1, that shows an example of different risk probabilities,

Table 1, p. 4) and a severity of consequence (Cf) table (via Table 2, that shows an

example of different risk consequences, Table 2, p. 4), risk identification information and

risk mitigation information (Fig. 1C shows a template for an identified risk, and control

[mitigation] plans, where said information must inherently be stored within a database);

However, Abrahams fails to explicitly disclose a web-based risk management tool on the server that provides standardized interfaces for searching, viewing and entering information to and from the shared risk database via a web browser, an intranet, and a plurality of computer workstations in communication with the server via the intranet, each said workstation provided with a web browser to search the database using the standardized interfaces to identify risks, to select entries from the Pf and Cf tables to calculate and prioritize a risk factor Rf for each risk, and to search the database to identify existing risk mitigation plans for the prioritized risks.

Beverina, in the same field of endeavor [risk management systems] teaches each said work station provided with a web browser to search the database using the standardized interfaces to identify risks (Fig. 3) and risk categories for each identified risk (i.e. as taught previously in Abrahams et al. as in claim 1 and/or Beverina himself when identifying risk), to select entries from the Pf and Cf tables [via the THREATS and VULNERABILITY hyperlinks in the drawing], to calculate and prioritize a risk factor Rf for each risk (where the calculation is accomplished by "calculating a probability that an event will occur; calculating a vulnerability to the event; and calculating a relative risk based on the probability and vulnerability", Claim 13, and prioritizing a risk factor is done by "clicking on a column heading will sort and group the table based on that column", Fig. 16). It would have been obvious to one skilled in the art at the time of invention to combine the system taught by Abrahams with the browser abilities of Beverina. Motivation to combine is easier access to the system.

However, Abrahams and Beverina both fail to disclose an intranet and a plurality

of workstations in communication with the server via the communications network.

Heinrich, in the same field of endeavor [risk management] teaches "a system containing

a user computer, a network, and a security computer", (Col. 15, lines 46-47) and that

the network "may also represent a corporate extranet or intranet" (Col. 15, lines 53-55).

It would have been obvious to one skilled in the art at the time of invention to combine

the combination of Abrahams and Beverina with the network of Heinrich. Motivation for

the combination is to create a risk management system with easy system interaction

and easy user communication. Regardless, much of Applicants structural claims only

recite intended use of the apparatus; therefore, it is the Examiner's position that the

structure is capable of Applicant's intended purpose.

35.   **As per claim 20**, Abrahams fails to explicitly disclose the method wherein the

web browser has an interface that includes a menu bar with pull-down menu items and

menu sub-items for viewing the current program, conducting the enterprise search and

conducting the mitigation search and hyperlinks to the Pf and Cf tables. However,

Beverina, in the same field of endeavor [risk management systems] teaches a web

browser (Fig. 3), with pull-down menu items [viewable in the drawing] and menu sub-

items for viewing the current program [viewable in the drawing], conducting the

enterprise search [via the search box] and conducting the mitigation search [via the

search box] and hyperlinks to the Pf and Cf tables [via the THREATS and

VULNERABILITY hyperlinks in the drawing]. It would have been obvious to one skilled

in the art at the time of invention to combine the risk management system taught by

Abrahams with the web based feature of Beverina. Motivation for the combination is a

system with more features that should produce better risk management analysis and

techniques as well as easier navigation of information. At least one mitigation activity is

associated with the plan and is formulated, as described in claim 1. Regardless, much

of Applicants structural claims only recite intended use of the apparatus; therefore, it is

the Examiner's position that the structure is capable of Applicant's intended purpose.

36.   **As per claim 22**, the Abrahams and Heinrich combination fails to explicitly

disclose the system wherein the workstation via the web browser submits an enterprise

search that includes a combination of at least two parameters including current or

historic, risk factor, vendor, component, functional area, category, key word in risk title,

key word in risk description, IPT, actionee, actionee/team lead/submitter or risk number

and the server returns via the web browser an enterprise search results list including for

at least one risk a combination of risk number, program, risk title, a current risk factor

and its risk mitigation plan.. However, Beverina, in the same field of endeavor [risk

management systems], teaches searches "by categories such as threat type, risk, score

and others". Examiner construes risk to be the current risk factor, and threat type to be

the category. Beverina further teaches that users can "search and browse the data

from the individual VAT 200 sessions by categories such as threat type, risk, score and

others." (¶ 363) Figure 50 shows a calendar within that VAT 200 for entry of start and

completion dates. A user therefore, would be able to do a mitigation search including

the parameters of start date and complete date. Finally, Beverina teaches a web

browser enterprise search (Fig. 3 via the search option). It would have been obvious to

one skilled in the art at the time of invention to combine the system of Abrahams and

Heinrich with the tools of Beverina. Motivation to combine is creation of a risk

management system with easier access to information and ease of modification.

Regardless, much of Applicants structural claims only recite intended use of the

apparatus; therefore, it is the Examiner's position that the structure is capable of

Applicant's intended purpose.

37.   **As per claim 23**, the Abrahams and Heinrich combination fails to explicitly

disclose the system wherein the workstation via the web browser submits a mitigation

search that includes a combination of at least two parameters including a risk

description, risk status, start date, original planned complete date, planned complete

date and complete date and the server returns existing mitigation plans that satisfy the

search parameters. However, Beverina, in the same field of endeavor [risk

management systems], teaches that users can "search and browse the data from the

individual VAT 200 sessions by categories such as threat type, risk, score and others."

(¶ 363) Figure 50 shows a calendar within that VAT 200 for entry of start and

completion dates. A user therefore, would be able to do a mitigation search including

the parameters of start date and complete date. It would have been obvious to one

skilled in the art at the time of invention to combine the risk management system taught

by Abrahams and Heinrich with the risk management system features of Beverina.

Motivation for the combination is a system with more features that should produce

better risk management analysis and techniques. Regardless, much of Applicants

structural claims only recite intended use of the apparatus; therefore, it is the

Examiner's position that the structure is capable of Applicant's intended purpose.

38.   **As per claim 24**, the Abrahams and Heinrich combination fails to explicitly

disclose the system wherein the workstations automatically submit identified risks, risk

factors and mitigation plans to the shared database, said server automatically

generating risk reports including identified risks, prioritized risk factors and mitigation

plans for the current project. However, Beverina, in the same field of endeavor [risk

management systems], teaches that users can "create, edit and delete report formats to

create new and customized reports to meet future needs" (¶ 374, lines 6-7). A user

would be enabled to create risk reports including the identified risk, prioritized risk

factors, and mitigation plans. It would have been obvious to one skilled in the art at the

time of invention to combine the risk management system taught by Abrahams and

Heinrich with the risk management reporting feature of Beverina. Motivation for the

combination is a system with more features that should produce better risk

management analysis and techniques as well as easier sharing of information.

Regardless, much of Applicants structural claims only recite intended use of the

apparatus; therefore, it is the Examiner's position that the structure is capable of

Applicant's intended purpose.

39.   **As per claim 34,** Abrahams, Berverina and Heinrich teach the system of claim

19, wherein existing risk mitigation plans for different risks are stored in the shared

database, said web browser configured to formulate a mitigation search of the risk

database to identify existing risk mitigation plans for the identified risk, formulate a new

risk mitigation plan that's builds upon the one or more existing risk mitigation plans, and store the new risk mitigation plan on the shared database. Claim 34 is rejected under a similar rationale as that of claim 29 supra. Regardless, much of Applicants structural claims only recite intended use of the apparatus; therefore, it is the Examiner's position that the structure is capable of Applicant's intended purpose.

40.   **As per claim 35,** Abrahams, Berverina and Heinrich teach the system of claim 34, wherein the mitigation search identifies both successful and unsuccessful existing risk mitigation plans. Claim 35 is rejected under a similar rationale as that of claim 30. Similarly limitations directed to "said risk mitigation plan having an associated risk exposure based on the risk factors Rf, display chart of risk exposure over time and facilitate adjustments to the mitigation plan based on the risk exposure" are similarly rejected over a similar rationale as that of similar limitations in claim 1. Regardless, much of Applicants structural claims only recite intended use of the apparatus; therefore, it is the Examiner's position that the structure is capable of Applicant's intended purpose.

41.   **As per claim 36,** Abrahams, Berverina and Heinrich teach the system of claim 34, wherein the web browser facilitates sharing resources with other programs to implement the mitigation plan. Claim 36 is rejected under a similar rationale as that of claim 32. Regardless, much of Applicants structural claims only recite intended use of the apparatus; therefore, it is the Examiner's position that the structure is capable of Applicant's intended purpose.

42.   Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Abrahams (2005/0086090), Beverina (2001/0027389), and Heinrich (6,895,383) in

view of Examiner's Official Notice.

43.   **As per claim 21**, the combination of Abrahams, Beverina and Heinrich teaches

the claimed invention as mentioned in claim 19, above. Abrahams further teaches the

system wherein the PF table has a plurality of risk categories, each said category

having table entries that include standardized qualitative probability definitions (via

Table 1, that shows an example of different risk probabilities, Table 1, p. 4) and the Cf

table having a cost impact category with table entries for specifying multiple sub-

categories of cost impacts in actual dollars for the development project, (via Table 2,

that shows an example of different sub-categories, Table 2, p. 4) and tailoring the Pf

table to have few categories that are relevant to the current project (¶ 6, lines 7-8 teach

that a user can select inherent values of likelihood and consequence for a risk [this data

coming from Table 1 on p. 4]).

However, the Abrahams, Beverina and Heinrich combination fails to teach a schedule

impact category with table entries for specifying a schedule impact amount in days,

weeks or months and a web browser providing administrative access.

Examiner takes Official Notice that it is old and well known in the art of project

management to measure negative impacts upon projects like delays in units of time

such as days, weeks, or months. It would have been obvious to one skilled in the art at

the time of invention to combine the table taught by Abrahams and Heinrich with

Examiner's Official Notice. Motivation to combine is to have an additional quantifiable way to measure consequences of a particular outcome.

Beverina, further teaches a web browser (Fig. 3), and administrative access (via Fig. 1 where the Senior Commander is the administrative access). It would have been obvious to one skilled in the art at the time of invention to combine the system of Abrahams, Beverina, and Heinrich in view of Examiner's Official Notice with the additional features of Beverina. Motivation to combine is to create a risk management system with more detailed information and easier access. Regardless, much of Applicants structural claims only recite intended use of the apparatus; therefore, it is the Examiner's position that the structure is capable of Applicant's intended purpose.

Conclusion

44.   The Examiner has pointed out particular references contained in the prior art of record, within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael M. Thompson whose telephone number is (571)

270-3605. The examiner can normally be reached on Monday thru Friday 8am-5:30

except Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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